Mohamad Basri Izan bin Said Mohammad dan lain-lain lwn Global Force Security Sdn Bhd

MAHKAMAH TINGGI (TEMERLOH) — RAYUAN SIVIL NO CB-16–2–10 TAHUN 2023
ROSLAN MAT NOR H
9 JANUARI 2025

Undang-undang buruh — Pekerjaan — Pejabat Tenaga Kerja — Aduan — Inkuiri — Rayuan Tuntutan gaji kerja lebih masa dan tuntutan cuti tahunan — Tuntutan gaji kerja lebih masa dan cuti tahunan ditolak oleh Penolong Pengarah Tenaga Kerja semasa inkuiri kerana kegagalan perayu-perayu mengemukakan dokumen dan rayuan dibuat ke mahkamah tinggi — Sama ada suatu inkuiri yang dilakukan di hadapan Penolong Pengarah Tenaga Kerja merupakan suatu prosiding kehakiman — Sama ada keputusan atau perintah Penolong Pengarah Tenaga Kerja tepat apabila menggunakan peruntukan di dalam Akta Keterangan 1950 bagi memutuskan aduan yang dikemukakan oleh perayu-perayu kepada Pejabat Tenaga Kerja — Akta Kerja 1955 ss 60A, 60C, 60E, 69 & 70 — Akta Keterangan 1950 2, 77, 101-103 & 165

Ini merupakan rayuan yang difailkan oleh perayu-perayu kepada Mahkamah Tinggi terhadap keputusan Penolong Pengarah Tenaga Kerja Temerloh yang menjalankan inkuiri di bawah s 69 Akta Kerja 1955 ('inkuiri'). Pada akhir inkuiri tersebut, Penolong Pengarah Tenaga Kerja telah memberikan perintah iaitu perayu-perayu diberikan tuntutan baki gaji minimum bermula Mei 2022 sehingga Februari 2023 iaitu sebanyak RM2,700 setiap seorang. Namun begitu, tuntutan gaji kerja lebih masa bagi Mei 2022 sehingga Jun 2023 berjumlah RM44,813.97 dan cuti tahunan enam hari sebanyak RM360 adalah ditolak. Perayu-perayu yang tidak berpuas hati dengan keputusan Penolong Pengarah Tenaga Kerja telah mengemukakan rayuan kepada Mahkamah Tinggi. Keputusan Penolong Pengarah Tenaga Kerja tersebut menolak tuntutan gaji kerja lebih masa dan cuti tahunan adalah disebabkan oleh kegagalan perayu-perayu mengemukakan keterangan dan dokumen merujuk kepada Akta Keterangan 1950. Isu-isu di hadapan Mahkamah Tinggi adalah: (a) sama ada suatu inkuiri yang dilakukan di hadapan Penolong Pengarah Tenaga Kerja merupakan suatu prosiding kehakiman; dan (b) sama ada keputusan atau perintah Penolong Pengarah Tenaga Kerja tepat apabila menggunakan peruntukan di dalam Akta Keterangan 1950 bagi memutuskan aduan yang dikemukakan oleh perayu-perayu kepada Pejabat Tenaga Kerja. Perayu-perayu berhujah bahawa kegagalan mereka mengemukakan dokumen adalah disebabkan kehilangan dokumen tersebut dalam simpanan ekoran daripada rumah mereka dilanda banjir dan bahawa tuntutan diputuskan berdasarkan salinan penyata gaji yang tidak cukup. Manakala responden

berhujah bahawa keputusan Penolong Pengarah Tenaga kerja menolak tuntutan kerja lebih masa adalah betul kerana tiada keterangan dikemukakan dan penggunaan s 101 Akta Keterangan 1950 adalah tepat.

Diputuskan, membenarkan sebahagian rayuan perayu-perayu:

(1) Inkuiri di hadapan PPTK adalah proses yang dilakukan untuk meneliti aduan yang dikemukakan oleh pihak yang berkepentingan bawah Akta Kerja. Ini bertujuan untuk melihat sama ada terdapat ketidakpatuhan yang dilakukan oleh majikan atau pekerja seperti yang diperuntukkan bawah Akta Kerja. Bawah s 69 Akta Kerja, telah diperihalkan perkara-perkara khusus yang boleh dilakukan semasa pendengaran atau semasa mengendalikan inkuiri tersebut; bahkan bawah s 69(4) Akta Kerja, dinyatakan tatacara untuk mendengar inkuiri tersebut adalah seperti yang dinyatakan bawah Bahagian XV Akta Kerja. Akta Kerja tidak membebankan KPTK dengan isu-isu teknikal undang-undang seperti Akta Keterangan dalam memutuskan aduan yang dikemukakan di hadapan pegawai tersebut. Sebaliknya, undang-undang memperuntukkan bahawa KPTK perlu membuat inkuiri dengan meneliti dokumen-dokumen dan, sekiranya perlu, memeriksa mana-mana orang yang diminta hadir di hadapan KPTK untuk tujuan inkuiri tersebut. PPTK, dalam inkuiri ini, mengemukakan soalan-soalan pada pengadu dan majikan dalam menjalankan tugasnya dalam inkuiri tersebut, seperti yang dikehendaki bawah s 69 Akta Kerja. Sekiranya Akta Keterangan dipakai secara ketat, pemeriksaan saksi-saksi akan dilakukan oleh pihak-pihak dan bukan secara aktif oleh pihak yang menjalankan pendengaran satu-satu kes melainkan ini termasuk bawah s 165 Akta Keterangan (lihat perenggan 19).

(2) Akta Kerja 1955 tidak membebankan Ketua Pengarah Tenaga Kerja dengan isu-isu teknikal undang-undang seperti Akta Keterangan 1950 dalam memutuskan aduan yang dikemukakan. Namun begitu, mahkamah berpendapat prinsip umum undang-undang keterangan boleh diguna pakai semasa inkuiri tersebut dan tidak secara khusus penggunaan Akta Keterangan 1950 (lihat perenggan 20 & 22).

(3) Mahkamah juga mendapati asas kepada penolakan tuntutan perayu-perayu berkenaan dengan tuntutan gaji lebih masa dan cuti tahunan adalah disebabkan kegagalan mereka mengemukakan dokumen-dokumen yang berkaitan dan mengguna pakai s 114(g) Akta Keterangan. Pada hemat mahkamah walaupun tiada dokumen yang menyatakan bahawa pihak pekerja perlu untuk bekerja lebih masa namun dalam kes ini perayu-perayu telah bekerja melebihi daripada masa minimum tersebut yang ditetapkan di bawah Akta. Oleh itu mereka adalah layak untuk menggunakan s 60A Akta Kerja 1955 dan dibaca bersama dengan s 60A(3) Akta. Ia termasuk di dalam kerja lebih

masa dan dikehendaki supaya bayaran lebih masa diberikan. Oleh itu, mahkamah ini berpendapat dakwaan pihak perayu-perayu berkenaan dengan kerja lebih masa tersebut sewajarnya diterima oleh Penolong Pengarah Tenaga Kerja (lihat perenggan 34, 38 & 42).

(4) Seterusnya berkenaan dengan bayaran cuti yang didakwa oleh perayu-perayu tidak dibayar oleh pihak majikan. Cuti tersebut dipohon oleh pihak perayu pertama namun ia tidak diluluskan majikan. Mahkamah mengambil maklum bahawa cuti bukannya hak pekerja. Ia adalah satu kelayakan yang tertakluk kepada kelulusan majikan. Mahkamah ini berpendapat bahawa tuntutan berkaitan dengan cuti tahunan itu sebanyak RM360 sewajarnya tidak dibenarkan oleh Penolong Pengarah Tenaga Kerja berdasarkan keterangan yang ada di hadapan inkuiri tersebut (lihat perenggan 43–45).

[English summary

This was an appeal filed by the appellants to the High Court against the decision of the Assistant Director of Labour Temerloh to conduct an inquiry under s 69 of the Employment Act 1955 ('the inquiry'). At the end of the inquiry, the Assistant Director of Labour awarded the appellants a minimum wage balance claim from May 2022 to February 2023 for RM2,700 to be paid to each appellant. However, the claim for overtime salary for May 2022 to June 2023 amounting to RM44,813.97 and the six-day annual leave of RM360 was dismissed. Dissatisfied with the decision of the Assistant Director of Labour, the appellants filed an appeal to the High Court. The decision of the Assistant Director of Labour to dismiss the claim for overtime pay and annual leave was due to the failure of the appellants to submit evidence and documents in accordance to the Evidence Act 1950. The issues before the High Court were: (a) whether an inquiry conducted before the Assistant Director of Labour was a judicial proceeding; and (b) whether the decision or order of the Assistant Director of Labour was correct when using the provisions in the Evidence Act 1950 to decide complaints submitted by the appellants to the Labour Office. The appellants submitted that that their failure to produce the documents was due to the loss of the documents in storage as a result of their homes were hit by flood and that the claim was decided on the basis of insufficient copies of salary statements. Meanwhile, the respondent submitted that the decision of the Assistant Director of Labour to dismiss the overtime claim was correct as no evidence was adduced and the application of s 101 of the Evidence Act 1950 was correct.

Held, allowing the appellants' claim in part:

(1) The inquiry before the PPTK was a process carried out to examine complaints submitted by interested parties under the Employment Act. This was intended to observe whether there was any non-compliance committed by the employer or employee as provided under the

Employment Act. Under s 69 of the Employment Act, there was specific procedure during the hearing or during the conduct of the inquiry had been described; even under s 69(4) of the Employment Act, it was stated that the procedure for hearing the inquiry was as stated under Part XV of the Employment Act. The Employment Act did not burden the KPTK with legal technical issues such as the Evidence Act in deciding complaints submitted before the officer. On the other hand, the law provides that the KPTK must make an inquiry by examining the documents and, if necessary, examining any person who was requested to appear before the KPTK for the purpose of the inquiry. The PPTK, in this inquiry, asked questions to the complainant and the employer in carrying out its duties in the inquiry, as required under s 69 of the Employment Act. If the Evidence Act was strictly applied, the examination of witnesses would be carried out by the parties and was not done actively by the parties conducting the hearing of a case unless this falls under s 165 of the Evidence Act (see para 19).

(2) The Employment Act 1955 did not burden the Director General of Labour with legal technical issues such as the Evidence Act 1950 in deciding complaints submitted. However, the court was of the opinion that the general principles of the law of evidence could be applied during the inquiry and not specifically the application of the Evidence Act 1950 (see paras 20 & 22).

(3) The court also found that the basis for the appellants' dismissal of the claims for overtime pay and annual leave was due to their failure to produce the relevant documents and s 114(g) of the Evidence Act was invoked. The court was of the view that even though there was no document stating that the employee was required to work overtime, in this case the appellants had worked more than the minimum time stipulated under the Act. Therefore they were eligible to use s 60A of the Employment Act 1955 and read together with s 60A(3) of the Act. The overtime work was there in the Act and it was required that overtime work to be paid. Therefore, this court was of the opinion that the appellants' allegations with regard the overtime work should have been accepted by the Assistant Director of Labour (see paras 34, 38 & 42).

(4) Further, with regard to the leave pay claimed by the appellants was not paid by the employer. The leave was applied for by the first appellant but it was not approved by the employer. The court noted that leave was not an employee's right. That was subject to the approval of the employer. The court was of the opinion that the claim relating to the annual leave of RM360 should not have been allowed by the Assistant Director of Labour based on the evidence available before the inquiry (see paras 43–45).]

Kes-kes yang dirujuk

All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 6 MLJ 97, MP (dirujuk)

Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal [2004] 2 MLJ 193, MR (dirujuk)

Derek Selby Deed, Re [1971] 2 MLJ 277 (dirujuk)

Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors [1996] 3 MLJ 489; [1996] 4 CLJ 747, MR (dirujuk)

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369, MP (dirujuk)

Ketua Pengarah Buruh v Britania Brands (Malaysia) Sdn Bhd [2010] MLJU 504; [2010] 6 CLJ 370, MR (dirujuk)

Malaysia Building Society Bhd v Univein Sdn Bhd [2003] 5 MLJ 394, MT (dirujuk)

PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60, MP (diikut)

PP v Yuvaraj [1969] 2 MLJ 89, PC (dirujuk)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, MP (dirujuk)

Undang-undang yang dirujuk

Akta Kerja 1955 ss 60A, 60A(1)(b), (1)(c), (1)(d), (3), 60C, 60E, 69, 69(4), 70, 70(g), 77, Bahagian XV

Akta Keterangan 1950 ss 2, 101, 102, 103, 114(g), 165

Akta Perhubungan Perusahaan 1967 s 30(5)

Labour Code (Cap 154) (dimansuhkan oleh Akta Kerja 1955) ss 82, 85

Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 [UK]

Rayuan daripada: Kes Buruh Temerloh No KBR/10604/2023/0111 (Pejabat Tenaga Kerja Temerloh)

Tidak diwakili bagi pihak perayu-perayu.
Khairul Anuar bin Abu Hassan Ashaari (Rhubini Nataraja & Co) bagi pihak responden.

Roslan Mat Nor H:

PENDAHULUAN

[1] Ini adalah rayuan terhadap keputusan Penolong Pengarah Tenaga Kerja Temerloh yang menjalankan inkuiri di bawah s 69 Akta Kerja 1955. Pada akhir inkuiri itu, Penolong Pengarah Tenaga Kerja telah memberikan perintah iaitu perayu-perayu diberikan tuntutan baki gaji minimum bermula Mei 2022 sehingga Februari 2023 iaitu sebanyak RM2,700 setiap seorang. Sementara itu

tuntutan gaji kerja lebih masa bagi Mei 2022 sehingga Jun 2023 berjumlah RM44,813.97 dan cuti tahunan enam hari sebanyak RM360 adalah ditolak. A

[2] Perayu-perayu mengemukakan rayuan ke mahkamah ini terhadap keputusan Penolong Pengarah Tenaga Kerja di atas keputusan menolak tuntutan gaji kerja lebih masa dan cuti tahunan. B

[3] Perayu-perayu merupakan pekerja kepada responden. Hakikat bahawa perayu-perayu adalah pekerja kepada responden tidak dipertikaikan semasa inkuiri di hadapan Penolong Pengarah Tenaga Kerja atau semasa pendengaran rayuan ini. C

[4] Di dalam alasan penghakiman yang disediakan oleh Penolong Pengarah Tenaga Kerja menyatakan bahawa semasa sesi soalan, persoalan dikemukakan kepada perayu-perayu sama ada syarikat ada mengeluarkan arahan kerja lebih masa. Perayu-perayu mengesahkan tiada arahan kerja lebih masa dikeluarkan kerana kerja-kerja yang dilakukan adalah syif iaitu dua syif, 8 pagi hingga 8 malam dan 8 malam hingga 8 pagi. Penolong Pengarah Tenaga Kerja merujuk kepada s 60A(1)(b), (c) dan (d) Akta Kerja 1955 yang memperuntukkan bahawa seseorang pekerja kontrak perkhidmatan dalam kerja syif boleh dikehendaki oleh majikannya supaya bekerja lebih daripada lapan jam dalam mana-mana satu hari atau lebih daripada 45 jam dalam mana-mana satu minggu tetapi purata bilangan jam bekerja dalam mana-mana tempoh atau apa-apa tempoh melebihi tiga minggu sebagaimana yang diputuskan oleh Ketua Pengarah Tenaga Kerja hendaklah tidak melebihi 45 jam seminggu. D E F

[5] Sementara itu berkenaan dengan tuntutan cuti tahunan sebanyak RM360 perayu-perayu gagal membuktikan potongan yang dibuat melalui rekod transaksi bayaran secara *online* untuk mengesahkan bahawa berlaku penolakan gaji terhadap cuti tahunan selama enam hari seperti yang didakwa. Penolong Pengarah Tenaga Kerja juga telah menggunakan s 101 Akta Keterangan 1950 dan s 114(g) Akta yang sama. Ini dapat dilihat melalui alasan penghakiman yang disediakan oleh Penolong Pengarah Tenaga Kerja. G H

HUJAHAN PERAYU-PERAYU

[6] Perayu-perayu dalam kes ini tidak diwakili peguam semasa pendengaran rayuan ini. Namun demikian mereka telah memfailkan hujahan bertulis. Dalam hujahan bertulis ringkas mereka, ditimbulkan kegagalan mereka semasa inkuiri di hadapan Penolong Pengarah Tenaga Kerja mengemukakan dokumen adalah disebabkan hilang dalam simpanan ekoran daripada rumah mereka dilanda banjir. Ia telah tidak diendahkan oleh Penolong Pengarah Tenaga Kerja. Perayu-perayu juga menyatakan bahawa ketidakpuasan hati I

A mereka terhadap keputusan Penolong Pengarah Tenaga Kerja adalah disebabkan tuntutan mereka diputuskan berdasarkan kepada salinan penyata gaji yang tidak cukup.

HUJAHAN RESPONDEN

B

[7] Responden juga dalam hujahannya menegaskan bahawa Penolong Pengarah Tenaga Kerja telah membuat keputusan yang betul menolak tuntutan kerja lebih masa atas alasan tiada keterangan yang dikemukakan. Oleh itu keputusan Penolong Pengarah Tenaga Kerja menggunakan s 101 Akta C Keterangan 1950 adalah tepat. Oleh itu peguam responden berhujah bahawa perintah yang diberikan oleh Penolong Pegawai Tenaga Kerja adalah teratur dan tidak wajar diketepikan oleh mahkamah ini.

ANALISA

D

[8] Adalah wajar mahkamah sebelum meneliti merit kes ini memahami apakah kedudukan suatu inkuiri yang dilakukan di hadapan Penolong Pengarah Tenaga Kerja. Ini adalah penting disebabkan Penolong Pengarah E Tenaga Kerja telah menggunakan peruntukan-peruntukan di bawah Akta Keterangan 1950. Berdasarkan kepada Akta tersebut tuntutan perayu-perayu telah ditolak. Dalam hal ini mahkamah merujuk kepada s 69 Akta Kerja 1955 dan mendapati seperti berikut:

> 69 Director General's power to inquire into complaints
>
> F (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under —
>
> (a) any term of the contract of service between such employee and his G employer;
>
> (b) any of the provisions of this Act or any subsidiary legislation made thereunder; or
>
> (c) the provisions of the Wages Council Act, 1947 or any order made H thereunder,
>
> and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.
>
> I (2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by —
>
> (i) an employee against any person liable under section 33;

(ii) a contractor for labour against a principal, contractor or sub-contractor for any sum which the contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or

(iii) an employer against his employee in respect of indemnity due to such employer under subsection 13(1),

and to make such consequential orders as may be necessary to give effect to his decision.

(3) In addition to the powers conferred by subsections (1) and (2), the Director General may inquire into and confiRMor set aside any decision made by an employer under subsection 14(1) and the Director General may make such consequential orders as may be necessary to give effect to his decision:

Provided that if the decision of the employer under paragraph 14(1)(a) is set aside, the consequential order of the Director General against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:

Provided further that the Director General shall not set aside any decision made by an employer under paragraph 14(1)(c) if such decision has not resulted in any loss in wages or other payments payable to the employee under his contract of service:

And provided further that the Director General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Part within sixty days from the date on which the decision under section 14 is communicated to him either orally or in writing by his employer.

(3A) An order made by the Director General for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director General may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied:

Provided that the Director General, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

(4) A person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.

[9] Mahkamah Rayuan dalam kes *Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal* [2004] 2 MLJ 193 telah menjelaskan kedudukan inkuiri yang dilakukan oleh Penolong Pengarah Tenaga Kerja dan berpendapat bahawa ianya bukan sebuah mahkamah. Dalam

kes tersebut dinyatakan seperti berikut:

> 10 The inquiry that was conducted by the Senior Labour Officer in the present case is the inquiry by virtue of the power under s 69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It is only an inquiry and not a court proceeding. It is therefore erroneous to classify the Labour Office as an 'inferior court' in the definition of 'subordinate court' under s 3 of the CJA or a Labour Court as it is normally called, simply because the Labour Office is not a court in the first place. Moreover, there is no provision for a Labour Court in the EA.

[10] Ini juga dapat dilihat apabila Mahkamah Rayuan telah mempertimbangkan suatu semakan kehakiman yang bermula daripada keputusan Ketua Pengarah Tenaga Kerja di atas kegagalan membenarkan pihak-pihak mendapatkan peguam. Ini dapat dilihat dalam kes *Ketua Pengarah Buruh v Britania Brands (Malaysia) Sdn Bhd* [2010] MLJU 504; [2010] 6 CLJ 370.

PERUNDANGAN SOSIAL

[11] Pada masa yang sama mahkamah juga perlu memberi perhatian bahawa Akta Kerja 1955 adakah termasuk di dalam perundangan sosial seperti yang ditakrifkan dalam kes *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60 seperti berikut:

> ... A social legislation is a legal term for a specific set of laws passed by the legislature for the purpose of regulating the relationship between a weaker class of persons and a stronger class of persons. Given that one side always has the upper hand against the other due to the inequality of bargaining power, the state is compelled to intervene to balance the scales of justice by providing certain statutory safeguards for that weaker class ...

[12] Ini juga dinyatakan dalam kes *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369 semasa Mahkamah Persekutuan meneliti Akta Perhubungan Perusahaan 1967 telah menyatakan seperti berikut:

> Now, it is well settled that the Act is a piece of beneficent social legislation by which Parliament intends the prevention and speedy resolution of disputes between employers and their workmen. In accordance with well settled canons of construction, such legislation must receive a liberal and not a restricted or rigid interpretation. If authority is required for this proposition, it is to be found in the decision of the Court of Appeal in *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317. *The three interconnected definitions which were cited by Salleh Abas LP in his judgment in Inchcape as well as* s 20 (under which the instant respondent's case was referred to the Industrial Court) appear in a statute requiring liberal interpretation and for that reason should themselves be liberally interpreted.

[13] Oleh itu mahkamah juga perlu meneliti garis panduan yang dinyatakan oleh Mahkamah Persekutuan dalam *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* dalam memberikan tafsiran kepada perundangan sosial seperti berikut:

> [36] From the above, we would summarise the principles on the interpretation of social legislation as follows:
>
> (a) statutory interpretation usually begins with the literal rule. However, and without being too prescriptive, where the provision under construction is ambiguous, the courts will determine the meaning of the provision by resorting to other methods of construction foremost of which is the purposive rule (see the judgment of this court in *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97);
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> (b) the literal rule is automatically displaced by the purposive rule when it concerns the interpretation of the protective language of social legislation; and
>
> (c) for the avoidance of doubt, it is important to emphasise that even where a term or provision of a social legislation or a statutory contract enacted thereunder is literally clear or unambiguous, the court no less shoulders the obligation to ensure that the said term or provision is interpreted in a way which ensures maximum protection of the class in whose favour the social legislation was enacted.

[14] Apa yang penting dalam kes ini ialah adakah keputusan atau perintah Penolong Pengarah Tenaga Kerja tepat apabila menggunakan peruntukan di dalam Akta Keterangan 1950 bagi memutuskan aduan yang dikemukakan oleh perayu-perayu kepada Pejabat Tenaga Kerja? Berdasarkan kepada kes *Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal* telah diputuskan bahawa inkuiri di hadapan Penolong Pengarah Tenaga Kerja bukannya mahkamah. Dalam hal ini mahkamah merujuk kepada takrifan mahkamah di bawah Akta Keterangan 1950 yang menyatakan seperti berikut:

> 'court' means a court established by or under Part IX of the Federal Constitution and includes —
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> (a) a Judge;
>
> (b) a Sessions Court Judge;
>
> (c) a Magistrate; and
>
> (d) except an arbitrator, every person legally authorized to take evidence.

[15] Sebagai pelengkap berkenaan dengan perkara ini wajar mahkamah merujuk kepada keputusan *Re Derek Selby Deed* [1971] 2 MLJ 277 di mana mahkamah telah memberikan penjelasan berkenaan dengan takrifan

mahkamah di bawah Akta Keterangan 1950 seperti berikut:

> The word 'court' is also defined in the Evidence Ordinance but that definition is for the purposes of that Ordinance itself and cannot be extended beyond its legitimate scope (see *The Queen Empress v Tulja* ILR 12 Bom 36). A person or persons constituting a court should be entrusted with judicial functions and this of necessity involves a decision on questions which are litigated before it and the decision of such a court has to be in accordance with the law. These two attributes seem to be essential in any judicial pronouncement of the court. It is only when there is lis inter partes that a court gives a binding decision in respect of the dispute. It determines matters initiated by parties. It has powers to impose sanctions by way of imprisonment, fine, damages and to enforce obedience to its commands.

[16] Walau bagaimanapun mahkamah ini juga perlu melihat kepada pemakaian Akta Keterangan 1950 ini kepada inkuiri yang dibuat oleh Penolong Pengarah Tenaga Kerja dengan merujuk kepada s 2 Akta Keterangan 1950 yang memperuntukkan seperti berikut:

> 2 Extent
>
> This Act shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator.

APAKAH INKUIRI TERSEBUT ADALAH TERMASUK DI DALAM PROSIDING KEHAKIMAN?

[17] Majlis Privy dalam kes *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89 telah menjelaskan maksud prosiding kehakiman dalam konteks Akta Keterangan 1950 seperti berikut:

> The third ingredient which is to be presumed to exist unless the contrary is proved is a 'fact' within the definition of that word in the Evidence Ordinance. That Ordinance provides in s 2 that it 'shall apply to all judicial proceedings in or before any court' with certain exceptions which are not material to the present case. Accordingly wherever a Malaysian enactment contains provisions relating to judicial proceedings for a criminal offence any reference in those provisions to the proof of facts must, in their Lordships' view, be construed in the light of any relevant definitions in the Evidence Ordinance.

[18] Pada masa yang sama mahkamah juga meneliti keputusan Mahkamah Tinggi dalam kes *Malaysia Building Society Bhd v Univein Sdn Bhd* [2003] 5 MLJ 394 berkenaan dengan pemakaian Akta Keterangan dalam konteks prosiding kehakiman apabila Ya Hakim Suriyadi Hakim Mahkamah Tinggi (ketika itu) telah memberikan pentafsiran yang menarik berkenaan dengan pemakaian s 2 tersebut seperti berikut:

> A microscopic perusal of s 2 will highlight that there are two parts to that provision due to the promulgation of the punctuation mark (',') after '... in or before any

court,'. In no uncertain terms could I ignore that punctuation, in this case that comma, as it was abundantly clear that it had a role to play in that piece of legislation. It thus follows that by that disjunctive comma, the Evidence Act 1950 would be applicable to all judicial proceedings in or before any court', with the hearing before me certainly qualifying as one. Its inapplicability will be triggered the moment the invocation of the Act is intended to fall under the second part, ie 'to affidavits, presented to any court or officer nor to proceedings before an arbitrator'. Invariably, if I were to invoke ss 56 and 57 with that intention in mind, then the defendant's argument would have some merit. As it were, I was satisfied that the invocation of the latter two provisions were pursuant to a judicial proceeding, and thus would have fallen squarely under the first part of s 2. With all the preliminary issues resolved, I had thereafter accordingly invoked the 'judicial notice' provisions.

[19] Mahkamah ini berpendapat inkuiri di hadapan Penolong Pengarah Tenaga Kerja adalah proses yang dilakukan bagi meneliti aduan yang dikemukakan oleh pihak yang berkepentingan di bawah Akta Kerja 1955. Ia adalah bertujuan untuk melihat sama ada terdapat ketidakpatuhan yang dilakukan oleh majikan atau pekerja seperti yang diperuntukkan di bawah Akta Kerja 1955. Oleh yang demikian di bawah s 69 Akta tersebut telah diperihalkan perkara-perkara khusus yang boleh dilakukan semasa pendengaran ataupun semasa mengendalikan inkuiri tersebut. Malahan di bawah s 69(4) Akta menyatakan bahawa prosedur untuk mendengar inkuiri tersebut adalah seperti yang dinyatakan di bawah Bahagian XV Akta Kerja 1955. Malahan s 70 Akta yang sama memperihalkan prosedur tersebut seperti berikut:

70 Procedure in Director General's inquiry

The procedure for disposing of questions arising under sections 69 and 69F shall be as follows:

(a) the person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks;

(b) the Director General shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant's statement in his case book;

(c) the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:
Provided that if the person complained against attends in person before the Director General it shall not be necessary to serve a summons upon him;

A (d) when issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;

(e) when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;

(f) when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;

(g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;

(h) if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;

(i) in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed.

[20] Mahkamah ini berpendapat Akta Kerja 1955 tidak membebankan Ketua Pengarah Tenaga Kerja dengan isu-isu teknikal undang-undang seperti Akta Keterangan 1950 dalam memutuskan aduan yang dikemukakan di hadapan pegawai tersebut. Sebaliknya undang-undang memperuntukkan bahawa Ketua Pengarah Tenaga Kerja perlu membuat inkuiri dengan meneliti dokumen-dokumen dan sekiranya perlu memeriksa mana-mana orang yang diminta hadir di hadapan Ketua Pengarah Tenaga Kerja untuk tujuan inkuiri tersebut. lni dinyatakan di bawah s 70(g) Akta tersebut seperti berikut:

> (g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he

deems material to the matters in issue and shall then give his decision on the matters in issue.

[21] Oleh itu adalah didapati bahawa Penolong Pengarah Tenaga Kerja dalam inkuiri ini mengemukakan soalan-soalan kepada pengadu dan majikan bagi menjalankan tugasnya di dalam inkuiri tersebut seperti yang dikehendaki di bawah s 69 Akta tersebut. lni adalah disebabkan sekiranya pemakaian yang ketat Akta Keterangan 1950, pemeriksaan saksi-saksi akan dilakukan oleh pihak-pihak dan bukannya secara aktif oleh pihak yang menjalankan pendengaran sesuatu kes melainkan ia termasuk di bawah s 165 Akta Keterangan 1950 yang memperuntukkan seperti berikut:

165 Judge's power to put questions or order production

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any format any time, of any witness or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that —

(i) the judgment must be based upon facts declared by this Act to be relevant and duly proved;

(ii) this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which the witness would be entitled to refuse to answer or produce under sections 121 to 131 if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with the primary evidence of any document, except in the cases hereinbefore excepted.

[22] Ini memberi gambaran bahawa inkuiri yang dilakukan oleh Ketua Pengarah Tenaga Kerja tidak terikat dengan peruntukan di bawah Akta Keterangan 1950. Dalam erti kata lain kegagalan mematuhi Akta Keterangan 1950 tidak boleh dijadikan alasan untuk menolak atau menerima aduan yang dikemukakan oleh pihak-pihak kepada Ketua Pengarah Tenaga Kerja. Namun begitu, mahkamah ini berpendapat prinsip umum undang-undang keterangan boleh diguna pakai semasa inkuiri tersebut dan tidak secara khusus penggunaan Akta Keterangan 1950.

[23] Pada masa yang sama juga pekerja dan majikan tidak sewajarnya dibebankan dengan isu-isu teknikal undang-undang sehingga menyebabkan ketidakpatuhan undang-undang tersebut boleh membawa kesan kepada aduan mereka diketepikan oleh Penolong Pengarah Tenaga Kerja. Jika ini dilakukan

mahkamah berpendapat ia menyebabkan tujuan inkuiri yang dilakukan itu telah diselubungi dengan isu undang-undang yang sepatutnya dibangkitkan semasa perbicaraan di mahkamah dan bukannya di hadapan Penolong Pengarah Tenaga Kerja.

[24] Jika disorot sejarah perundangan buruh dan melihat bagaimana di bawah Labour Code Chapter 154 yang diperkenalkan pada 25 April 1933 didapati ada peruntukan di mana aduan boleh dikemukakan kepada pengawal (*controller*). Pengawal (*controller*) boleh memanggil pekerja dan majikan untuk membuat penyiasatan seperti yang dinyatakan di bawah s 82 Labour Code tersebut dan sekiranya pengawal (*controller*) mendapati ada asas kepada aduan tersebut, ia boleh mengemukakan prosiding sivil atau jenayah di mahkamah bagi pihak pekerja seperti di bawah s 85 seperti berikut:

> 85. If, upon enquiry as a foresaid, the Controller is of opinion that the complaint is well-founded, he shall institute such proceedings, civil or criminal, for and in the name of the labourer as he shall deem necessary under the circumstances.

[25] Penelitian kepada Labour Code Chapter 154 tersebut dan bersama-sama dengan Akta Kerja 1955 yang menggantikan Labour Code Chapter 154 tersebut ia mencadangkan bahawa inkuiri yang dilakukan oleh Penolong Pengarah Tenaga Kerja adalah merupakan satu proses yang dibuat bagi memastikan kepatuhan kepada Akta Kerja 1955 dan peraturan-peraturannya. Apabila memperolehi atau mendengar aduan kedua-dua pihak Penolong Pengarah Tenaga Kerja akan membuat keputusan atau perintah yang sewajarnya. Oleh itu ia bukan satu prosiding yang boleh dikatakan sebagai prosiding kehakiman walaupun tiada sebarang peruntukan khusus di bawah Akta Kerja 1955 yang mengecualikan pemakaian Akta Keterangan 1950 seperti yang terdapat di bawah Akta Perhubungan Perusahaan 1967. Seksyen 30(5) Akta Perhubungan Perusahaan 1967 menyatakan seperti berikut:

> 30 Awards
>
> (5) The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

[26] Pemakaian s 30(5) Akta tersebut telah dinyatakan oleh Mahkamah Rayuan dalam kes *Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489; [1996] 4 CLJ 747 seperti berikut:

> Further, s 30(5) of the Act imposes a duty upon the Industrial Court to have regard to the substantial merits of a case rather than to technicalities.
>
> It also requires the Industrial Court to decide a case in accordance with equity and good conscience.
>
> Parliament has imposed these solemn duties upon the Industrial Court in order to

give effect to the policy of a democratically elected government to dispense social justice to the nation's workforce. A

It is therefore our bounden duty to ensure that the Industrial Court applies the Act in a manner that best suits the declared policy of the elected government.

Where, as in the present case, there has been an obvious failure to do so, it is for us, the judicial arbiters, to set matters right. B

[27] Sementara itu Mahkamah Persekutuan ketika menjelaskan hubungkait di antara s 30(5) Akta Perhubungan Perusahaan 1967 dengan pliding dalam pendengaran oleh Mahkamah Perusahaan telah menyatakan seperti berikut dalam kes *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629: C

[29] There is no reason to depart from the above view. Pleadings in the Industrial Court are as important as in the civil courts. The appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. This is important in order to prevent element of surprise and provide room for the other party to adduce evidence once the fact or an issue is pleaded. Thus, the Industrial Court's duty, to act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form under s 30(5), does not give the Industrial Court the right to ignore the Industrial Court Rules 1967 made under the principle Act. Rule 9 provides as follows: D E

Statement of Case

(1) Upon a case being brought before the Court, the Registrar shall immediately serve notice in Form H on one or other of the parties as the President shall direct to submit to the Court a Statement of Case. F

[30] Rule 9(3) specifically prescribes the contents of a statement of case. It reads:

(3) Such Statement of Case shall be confined to the issues which are included in the Case referred to the Court by the Minister or in the matter required to be determined by the Court under the provisions of the Act and shall contain: G

(a) a statement of all relevant facts and arguments;

(b) particulars of decisions prayed for;

(c) an endorsement of the name of the first party and of the first party and of his address for service; and H

(d) as appendix or attachment, a bundle of all relevant documents relating to the case.

[31] The Court of Appeal has reproduced the applicant's statement of case in full in its judgment and found that the issue of victimisation was never pleaded. From the statement of case reproduced there is no doubt that the issue of victimisation was never pleaded. It was not a ground advanced by the appellant. As such the Industrial Court cannot act on a ground which was not advanced in a pleaded case. Section 30(5) of the Act cannot rescue the appellant's case. I

[28] Jika diteliti undang-undang pekerjaan dan prosiding di tribunal pekerja di United Kingdom terdapat juga peruntukan di dalam the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 yang menyatakan seperti berikut:

> RULES COMMON TO ALL KINDS OF HEARING
>
> General
>
> 41. The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

[29] Dalam kes ini mahkamah berpendapat setelah meneliti hakikat inkuiri di hadapan Penolong Pengarah Tenaga Kerja dan keputusan Mahkamah Rayuan dalam kes *Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal* serta proses penelitian aduan oleh Penolong Pengarah Tenaga Kerja, Akta Keterangan 1950 adalah tidak terpakai di dalam inkuiri tersebut. Ia membawa maksud kegagalan untuk mematuhi peruntukan di bawah Akta Keterangan 1950 oleh mana-mana pihak di dalam inkuiri tersebut tidak boleh dijadikan asas sama ada menolak atau menerima tuntutan tersebut. lni adalah selaras dengan tujuan s 69 dan Akta Kerja 1955 itu sendiri yang tidak sepatutnya menjadikan inkuiri tersebut sebagai satu prosiding mahkamah sehingga menimbulkan kesukaran kepada pihak pengadu mengemukakan tuntutan dan responden menafikan tuntutan tersebut. Jika ini berlaku ia telah menukar inkuiri di hadapan Penolong Pengarah Tenaga Kerja kepada suatu perbicaraan di mahkamah. Ini wajar dielakkan.

[30] Pada masa yang sama mahkamah juga perlu menimbangkan peruntukan berkenaan dengan rayuan daripada keputusan Ketua Pengarah Tenaga Kerja seperti yang dinyatakan di bawah s 77 Akta Kerja 1955 seperti berikut:

> 77 Appeal against Director General's order to High Court
>
> (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under section 69, 69F or 73, or subsection 81D(4) such person may appeal to the High Court.
>
> (2) Subject to any rules made under section 4 of the Subordinate Court Rules Act 1955, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

[31] Ini ditambah pula dengan peruntukan yang menyatakan bahawa prosedur rayuan tersebut adalah sama seperti prosedur bagi rayuan daripada mahkamah sesyen dengan sedikit pengubahsuaian yang dikehendaki. Adakah ini menunjukkan bahawa prosiding inkuiri di hadapan Ketua Pengarah Tenaga Kerja itu adalah satu prosiding kehakiman? Mahkamah berpendapat peruntukan berkenaan dengan rayuan adalah peruntukan statutori yang diperuntukkan oleh badan perundangan. Ia tidak sekali-kali menjadikan sesuatu inkuiri itu menjadi satu perbicaraan atau sesuatu tribunal itu akan menjadi mahkamah semata-mata disebabkan terdapat peruntukan undang-undang berkaitan dengan rayuan kepada Mahkamah Tinggi. Oleh itu dalam kes ini mahkamah berpendapat peruntukan rayuan perintah Ketua Pengarah Tenaga Kerja tidak mengubah kedudukan inkuiri tersebut kepada suatu prosiding kehakiman atau mahkamah.

MERIT KES

[32] Penelitian kepada nota catatan dalam inkuiri tersebut didapati bahawa pengadu pertama Mohamad Basri Izan bin Said Mohammad telah menyatakan bahawa dia adalah bekerja dua syif iaitu 8 pagi hingga 8 malam, 12 jam dan syif kedua adalah pada 8 malam hingga 8 pagi. Dia juga menyatakan telah menerima arahan bekerja lebih masa dalam surat yang telah hanyut semasa banjir. Begitu juga dengan keterangan pengadu kedua Mohd Noor Zaib bin Abu Bakar juga menyatakan waktu bekerja adalah 8 pagi hingga 8 malam. Sementara pengadu ketiga Abd Razak bin Mohd Amin juga menyatakan bahawa beliau bekerja dua syif iaitu 8 pagi 8 malam dan syif 8 malam hingga 8 pagi.

[33] Sementara itu wakil majikan Rohizah bt Ramli menyatakan bahawa tiada permohonan cuti tahunan dibuat oleh pengadu pertama untuk cuti pada 26 June 2023 hingga 30 June 2023. Perayu-perayu menyatakan bahawa mereka berhak untuk mendapat jumlah tambahan cuti tahunan sebanyak RM360. Mahkamah juga telah meneliti ekshibit-ekshibit yang dikemukakan semasa inkuiri tersebut iaitu penyata-penyata bank pengadu-pengadu dan juga slip gaji. Adalah didapati tidak semua slip gaji dikemukakan.

[34] Mahkamah juga mendapati asas kepada penolakan tuntutan pengadu-pengadu berkenaan dengan tuntutan gaji lebih masa dan cuti tahunan adalah disebabkan kegagalan pengadu-pengadu mengemukakan dokumen-dokumen yang berkaitan dan mengguna pakai s 114(g) Akta Keterangan 1950. Inilah yang menjadi asas kepada penolakan bayaran baki gaji RM300 iaitu kegagalan membuktikan kes itu seperti yang dikehendaki di bawah s 101 hingga 103 Akta Keterangan 1950.

[35] Selain daripada itu bagi bayaran kerja lebih masa Penolong Pengarah

Tenaga Kerja berpendapat ia tidak layak untuk diperolehi oleh pengadu-pengadu kerana mereka adalah pekerja syif.

[36] Dalam hal ini mahkamah merujuk kepada s 60A Akta Kerja 1955 yang menyatakan seperti berikut:

> 60A Hours of work and working at night
>
> (1) Except as hereinafter provided, an employee shall not be required under his contract of service to work —
>
> (a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;
>
> (b) more than eight hours in one day;
>
> (c) in excess of a spread over period of ten hours in one day;
>
> (d) more than forty-five hours in one week:
>
> Provided that —
>
> (i) for the purpose of paragraph (1)(a), any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;
>
> (ii) an employee who is engaged in work which must be carried on continuously and which requires his continual attendance may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five minutes in the aggregate during which he shall have the opportunity to have a meal; and
>
> (iii) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or forty-five hours in one week.

[37] Akta Kerja 1955 telah memperuntukkan masa minimum pekerja yang boleh diberikan kepada seseorang pekerja. Ini bermakna pada hemat mahkamah walaupun tiada dinyatakan dalam perjanjian pekerjaan yang tidak dikemukakan di hadapan Penolong Pengarah Tenaga Kerja disebabkan perjanjian ini sudah tiada kerana hilang ekoran banjir, namun s 60A Akta Kerja 1955 adalah terpakai. Seksyen 60A(3) Akta Kerja 1955 yang menyatakan bahawa:

> (3)(a) For any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate not less than one and half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.
>
> (b) In this section 'overtime' means the number of hours of work carried out in excess of the normal hours of work per day:

Provided that if any work is carried out after the spread over period of ten hours, the whole period beginning from the time that the said spread over period ends up to the time that the employee ceases work for the day shall be deemed to be overtime.

(c) For the purposes of this section, section 60, paragraph 60D(3)(a) and section 60I, 'normal hours of work' means the number of hours of work as agreed between an employer and an employee in the contract of service to be the usual hours of work per day and such hours of work shall not exceed the limits of hours prescribed in subsection (1).

[38] Pada hemat mahkamah walaupun tiada dokumen yang menyatakan bahawa pihak pekerja perlu untuk bekerja lebih masa namun dalam kes ini perayu-perayu telah bekerja melebihi daripada masa minimum tersebut yang ditetapkan di bawah Akta. Oleh itu mereka adalah layak untuk menggunakan s 60A Akta Kerja 1955 dan dibaca bersama dengan s 60A(3) Akta yang sama. Ia termasuk di dalam kerja lebih masa dan dikehendaki supaya bayaran lebih masa diberikan.

[39] Pada masa yang sama mahkamah juga merujuk kepada s 60C Akta Kerja 1955 yang memperuntukkan seperti berikut:

60C Shift work

(1) Notwithstanding paragraph 60A(1) (b), (d) and (c), but subject to paragraph (1)(a)thereof, an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-five hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director General, shall not exceed forty-five per week.

(1A) The approval of the Director General in subsection (1) may be granted if the Director General is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which render it necessary or expedient for him to grant the permission subject to such conditions as he may deem fit to impose.

(1B) The Director General may revoke the approval given under subsection (1A) at any time if he has reason to believe that it is expedient so to do.

(2) Except in the circumstances described in paragraph 60A(2)(a), (b), (c), (d) and (e), no employer shall require any employee who is engaged under his contract of service in shift work to work for more than twelve hours in any one day.

(2A) The Minister may make regulations relating to the entitlement of allowance during shift work.

(3) (Omitted).

[40] Penolong Pengarah Tenaga Kerja berpendapat bahawa perayu-perayu adalah bekerja secara giliran. Oleh itu tidak timbul isu bahawa mereka telah

bekerja lebih daripada yang ditetapkan di bawah s 60A Akta tersebut. Ini bermakna mereka tidak sewajarnya dibayar bayaran kerja lebih masa. Pada masa yang sama mahkamah juga mengambil perhatian bahawa perayu-perayu adalah pekerja sebagai pengawal keselamatan yang mempunyai waktu kerja 8 pagi hingga 8 malam dan syif kedua 8 malam hingga 8 pagi. Ini menunjukkan bahawa mereka bekerja bagi satu syif adalah 12 jam. Ini seolah-olah menunjukkan bahawa ia tidak menyalahi s 60C Akta Kerja 1955 iaitu apabila seseorang pekerja syif maka tidak timbul bayaran elaun lebih masa seperti yang dinyatakan di bawah s 60A Akta Kerja 1955 disebabkan satu tempoh syif boleh bekerja melebihi daripada 12 jam.

[41] Walau bagaimanapun dalam kes ini tiada keterangan yang dikemukakan oleh pihak majikan bagi menyanggah fakta bahawa perayu-perayu telah bekerja melebihi daripada tempoh 12 jam tersebut bagi mengecualikan responden daripada membuat bayaran kerja lebih masa tersebut. Apa yang ada ialah dakwaan perayu-perayu bahawa mereka sebenarnya telah bekerja melebihi daripada tempoh 12 jam tersebut. Pada hemat mahkamah ini Penolong Pengarah Tenaga Kerja sewajarnya mempertimbangkan keterangan bahawa dakwaan pihak Perayu itu tidak dapat disanggah oleh responden. Penolong Pengarah Tenaga Kerja itu dapat menentukan sama ada perayu-perayu bekerja lebih daripada 12 jam dengan berdasarkan kepada rekod kedatangan dan tempoh bekerja yang sepatutnya dikemukakan dalam inkuiri tersebut. Ini tidak dilakukan. Sebaliknya Penolong Pengarah Tenaga Kerja hanya berdasarkan kepada kegagalan semata-mata disebabkan perayu-perayu dikatakan bekerja syif. Oleh itu tidak timbul isu kerja lebih masa.

[42] Mahkamah ini berpendapat bahawa perintah Penolong Pengarah Tenaga Kerja tersebut tidak disokong dengan keterangan dan apa-apa dokumen tetapi hanyalah berdasarkan kepada penggunaan s 60C Akta Kerja 1955. Mahkamah ini berpendapat dakwaan pihak perayu berkenaan dengan kerja lebih masa tersebut sewajarnya diterima oleh Penolong Pengarah Tenaga Kerja. Oleh itu pada hemat mahkamah dapatan tersebut perlu campur tangan mahkamah ini. Mahkamah ini membenarkan rayuan perayu-perayu berkenaan dengan bayaran kerja lebih masa tersebut.

[43] Seterusnya berkenaan dengan bayaran cuti yang didakwa oleh pihak perayu tidak dibayar oleh pihak majikan. Dalam keterangan didapati bahawa perayu pertama mengesahkan bahawa dia tidak mempunyai keterangan berkenaan pengesahan cuti tahunan ditolak mulai tarikh 25 Jun 2023 hingga 30 Jun 2023. Pihak majikan semasa memberi keterangan dalam inkuiri tersebut menyatakan bahawa majikan ada menerima laporan permohonan cuti perayu pertama pada 25 Jun 2023 hingga 30 Jun 2023. Namun begitu wakil majikan mengesahkan bahawa kelulusan cuti tersebut yang telah diberikan

oleh pegawai operasi syarikat adalah tidak sah disebabkan pegawai operasi tidak layak untuk meluluskan cuti. Oleh itu cuti tersebut disifatkan oleh majikan sebagai cuti tidak diluluskan. Dalam erti kata lain memang cuti tersebut dipohon oleh pihak perayu pertama namun ia tidak diluluskan oleh syarikat.

[44] Adalah tidak dapat dinafikan bahawa tiada sebarang kenyataan daripada pihak majikan yang menjelaskan mengapa permohonan cuti tersebut ditolak. Ia hanya semata-mata berdasarkan kepada pegawai operasi syarikat tidak layak untuk meluluskan cuti. Mahkamah mengambil maklum bahawa cuti bukannya hak pekerja. Ia adalah satu kelayakan yang tertakluk kepada kelulusan majikan. Oleh itu di dalam Akta Kerja 1955 terdapat peruntukan-peruntukan yang khusus berkenaan dengan cuti sebagai satu jaminan cuti minimum yang mana majikan perlu meluluskan cuti tersebut dan sekiranya terdapat baki cuti maka majikan dikehendaki untuk membuat pembayaran sebagai ganti cuti tersebut. Hal ini dapat dilihat di bawah s 60E Akta Kerja 1955 berkenaan dengan cuti tahunan seperti berikut:

> 60E Annual Leave
>
> (1) An employee shall be entitled to paid annual leave of —
>
> (a) eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;
>
> (b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and
>
> (c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,
>
> and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:
>
> Provided that any fraction of a day of annual leave so calculated which is less than one-half of a day shall be disregarded, and where the fraction of a day is one-half or more it shall be deemed to be one day:
>
> And provided further that where an employee absents himself from work without the permission of his employer and without reasonable excuse for more than ten per centum of the working days during the twelve months of continuous service in respect of which his entitlement to such leave accrues he shall not be entitled to such leave.
>
> (1A) The paid annual leave to which an employee is entitled under subsection (1) shall be in addition to rest days and paid holidays.

A (1B) Where an employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or the maternity leave, as the case may be, and the annual leave shall be deemed to have not been taken in respect of the days for which sick leave or maternity leave is so granted.

B (2) The employer shall grant and the employee shall take such leave not later than twelve months after the end of every twelve months continuous service and any employee who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto:

C Provided that an employee shall be entitled to payment in lieu of such annual leave if, at the request of his employer, he agrees in writing not to avail himself of any or all of his annual leave entitlement.

(2A) Notwithstanding subsection (2), upon the termination of an employee's contract of service, the employee shall be entitled to take before such termination D takes place the paid annual leave due to be taken in the year in which the termination takes place in respect of the twelve months of service preceding the year in which the termination takes place, and, in addition, the leave accrued in respect of the completed months of service during the year in which the termination takes place.

E (3) The employer shall pay the employee his ordinary rate of pay for every day of paid annual leave, and an employee on a monthly rate of pay shall be deemed to have received the annual leave pay if he receives his monthly wages, without abatement in respect of such annual leave, for the month in which he takes such annual leave.

F (3A) If the contract of service has been terminated by either party before an employee has taken the paid annual leave to which he is entitled under this section, the employer shall pay the employee his ordinary rate of pay in respect of every day of such leave: Provided that this subsection shall not apply where an employee is dismissed under paragraph 14(1)(a).

G (3B) Where an employee is granted leave of absence without pay by his employer during any period of twelve months and the period of absence exceeds in the aggregate thirty days, that period of leave of absence shall be disregarded for the purpose of computing his length of service with the employer under this section.

H (4) The Minister may, by notification in the Gazette, fix the periods when and prescribe the manner in which annual leave shall be granted to employees in different types of employment or in different classes of industries.

[45] Seterusnya dalam kes ini mahkamah berpendapat bahawa Penolong I Pengarah Tenaga Kerja lebih menitikberatkan kepada kepatuhan terhadap Akta Keterangan 1950 dan kegagalan pihak perayu mematuhi Akta Keterangan 1950 yang dijadikan asbab kepada penolakan tuntutan pihak perayu. Namun mahkamah ini berpendapat bahawa tuntutan berkaitan dengan cuti tahunan itu sebanyak RM360 sewajarnya tidak dibenarkan oleh

Penolong Pengarah Tenaga Kerja berdasarkan keterangan yang ada di hadapan inkuiri tersebut.

[46] Akhirnya, mahkamah memerintahkan rayuan perayu-perayu dibenarkan dan responden hendaklah membayar kepada perayu-perayu sejumlah RM4,200 perbezaan gaji minimum setiap perayu dan RM14,937.99 bagi setiap perayu sebagai tuntutan gaji kerja lebih masa.

Rayuan dibenarkan secara sebahagian.

Dilaporkan oleh Siti Sarah Kamaruzaman